

From the Desk of Diane Killian-Allan,
in Propria Persona, Sui Juris

FARMINGTON CITY)	DAVIS COUNTY JUSTICE COURT,
Alleged Plaintiff,)	IN COUNTY OF DAVIS
VS.)	
)	Farmington, Utah
DIANE KILLIAN ALLEN,)	
Alleged Defendant)	

**ALLEGED DEFENDANT'S MOTION TO RECONSIDER
DENIAL OF MOTION TO DISMISS**

Now Comes Diane: Killian-Allan, alleged defendant, by special appearance, not by general appearance, and not submitting to the Court's jurisdiction, I waive no rights and preserve all rights forevermore, who hereby moves this Court to reconsider the Order dated July 8, 2022 (the Order) denying the Motion to Dismiss the complaints filed by FARMINGTON CITY stating:

1. This court erred in its order. Jurisdiction is a threshold issue. This court may not proceed in any matter until jurisdiction has been proven. Jurisdiction has not been proven. Pursuant to URCRP Rule 25 (b)(4) it must be dismissed.
 - a. Jurisdiction, once challenged, is to be proven, not by the court, but by the party attempting to assert jurisdiction. The burden of proof of jurisdiction lies with the asserter. The court is only to rule on the sufficiency of the proof tendered. See, McNutt v. General Motors Acceptance Corp., 298 U.S. 178 (1936). The origins of this doctrine of law may be found in MAXFIELD v. LEVY, 4 U.S. 330 (1797), 4 U.S. 330 (Dall.) 2 Dall. 381 2 U.S. 381 1 L.Ed. 424

**DAVIS COUNTY
JUSTICE COURT**

AUG 04 2022

RECEIVED
MB

Case: 1:22-cv-00117
Assigned To : Romero, Cecilia M.
Assign. Date : 09/09/2022
Description: Allan v Hanson et al

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Exhibit 8

the alleged Plaintiff, there is no affidavit of probable cause. I have never received service of process of any alleged matter. There has never been proper service of process. "The essential elements of due process are notice and an opportunity to defend." *Simon v Craft*, 182 US 427. Without lawful notice, there is no personal jurisdiction and all proceedings prior to filing of a proper trial document in compliance with the elements of jurisdiction is void. Any presumed contract does not meet the 8 elements of a contract and is thus void.

2. All information provided to date from FARMINGTON CITY and by and through the prosecutor is heresay. No direct evidence of any crime has been presented. Informations are not due process of law. There exists no accusation that has been made under Penalty of Perjury nor has a first hand witness come forward. Information acquired from software and/or computer data bases is not based on facts or evidence and is third party information and heresay and does not comply with the Federal Rule of Evidence 602 need for personal knowledge.

On the lawful issue of UNSIGNED PLEADINGS, the herein alleged defendant cites the case of **REPUBLIC OF THE PHILIPPINES, represented by the Land Registration Authority vs. KENRICK DEVELOPMENT CORPORATION, G.R. No. 149576, August 8, 2006**, the Supreme Court held that *an unsigned pleading is invalid and it produces no legal effect.* Thus, it must be DISMISSED outright via a motion to dismiss. It further held that "procedural requirements" (which have often been "disparagingly labeled as mere technicalities") have their own valid *raison d'etre* in the "orderly administration of justice". It furthermore held that to summarily brush such procedural requirements or technicalities may result in "arbitrariness and injustice."

5. The court erred in application of procedure and law as the alleged Plaintiff has failed to state a cause of action, provide probable cause, a signed information, signed affidavit, or any other proper evidence hence, pursuant to Fed. R. Civ. P. 12(b)(6) **it must be dismissed.**
6. This court erred in its prior order as the Judge is not applying the law to the facts of the cause. It is not for the court to practice law or legislate from the bench. Fox vs. USA 766 F Supp 569 (1991) "It is founded on the tenderness of the law for the rights of individuals; and on the plain principle, that the power of punishment is vested in the legislative, not in the judicial department. It is the legislature, not the court, which is to define a crime and ordain its punishment". It is fundamental law in the United States that criminal statutes must be construed strictly in favor of the accused, Chief Justice Marshall articulated this principle in 1820.
7. There is neither an injured party nor trespass. As all crimes are commercial, (27 CFR 72.11) and every alleged crime has to have "nature and cause", and be prosecuted in the name of the people of the state as a [the] REAL PARTY IN INTEREST
8. The cause is evidence that the officers committed these crimes against me under 18 USC 241 & 242 and others and this is proof of malicious prosecution.
9. The court erred in its decision as the alleged plaintiff is without standing. There is a glaring lack of lawful authority by the alleged Plaintiff **The alleged Plaintiff is without standing as there is no real party in interest. "As a general principal, standing to**

statute may sue in their own names in such representative capacity without joining the party for whose benefit the action is brought. When a statute so provides, a civil action for the use or benefit of another shall be brought in the name of the State of Utah or the United States. If brought by a party authorized they must prove their status as an authorized representative,

FEDERAL RULES OF CIVIL PROCEDURE (F.R.C.P.), RULE 1:

“There is one form of action – the civil action.”

URPC Rule 2

There shall be one form of action to be known as "civil action".

There is neither an injured party nor trespass. As all crimes are commercial, (27 CFR 72.11) and every alleged crime has to have “nature and cause”, and be prosecuted in the name of the people of the state as a [the] REAL PARTY IN INTEREST -- NOT the "PEOPLE OF THE STATE OF UTAH" or the People of the State of Utah, or FARMINGTON CITY, as that is the corporation and is an impossibility.

There is no injured party (Corpus Delicti). For a crime to exist, there must be an injured party (Corpus Delicti) There can be no sanction or penalty imposed on one because of this Constitutional Protected Right." Sherer v. Cullen 481 F. 945:

Supreme courts ruled "Without Corpus delicti there can be no crime""In every prosecution for crime it is necessary to establish the “corpus delicti”, i.e., the body or elements of the crime.” People v. Lopez, 62 Ca.Rptr. 47, 254 C.A.2d 185.

"In every criminal trial, the prosecution must prove the corpus delicti, or the body of the crime itself-i.e., the fact of injury, loss or harm, and the existence of a criminal agency as

Defendant has submitted to this this court a rescission under UCC 3-202 Negotiations Subject to Rescission and Affidavit of Truth and Fact served via Registered mail # RF3683250374.

14. The issues of **“FAILURE OT STATE A CAUSE OF ACTION” AND THE “LACK OF AUTHORITY” OF FARMINGTON CITY ARE PROCEDURAL ANTECEDENTS** THAT MUST FIRST BE RESOLVED WITH TOP PRIORITY, PREFERENCE AND UTMOST DISPATCH BEFORE THE PRETRIAL AND TRIAL STAGES OF THIS CASE.
15. **“Failure to state a cause of action”** refers to the **“insufficiency of the pleading”**, and is **“a ground for dismissal** under FRCP Rule 16 of the Rules of Court”.
16. **The United States Constitution Article IV Section 1** “Full Faith and Credit shall be given in each State to the public Acts, Records, and **judicial Proceedings of every other State.**” * January 19, 2011 Judge May’s Conclusion of Law was that the Dallas Police Department and the North Carolina Department of Transportation are both private entities that do **not** fall within the executive branch of State government. This decision was upheld in judicial review by judge Ridgeway. This means that **every** police department in the country is a “private entity,” in other words, they are private contractors and private-for-profit businesses. "Governments descend to the Level of a mere **private corporation**, and take on the characteristics of a mere private citizen...where private corporate commercial paper [Federal Reserve Notes] and securities [checks] is concerned. ... For purposes of suit, such corporations and individuals are **regarded as entities entirely separate from government.**" - Clearfield Trust Co. v. United States 318 U.S. 363-371 (1942) What the Clearfield Doctrine is

Hale vs Henkel Page 201 U.S. 74 and 75, "He owes no duty to the State or to his neighbors to divulge his business, or to open his doors to an investigation, so far as it may tend to criminate him. He owes no such duty to the State, since he receives nothing therefrom beyond the protection of his life and property. His rights are such as existed by the law of the land long antecedent to the organization of the State, and can only be taken from him by due process of law, and in accordance with the Constitution"

(2). that My explicit reservation of Rights has served notice upon ALL agencies of the government of the "Remedy" which they must provide for Me under Article 1, Section 308 (old 1- 207) of the Uniform Commercial Code, whereby I have explicitly reserved My Common Law Right not to be compelled to perform under any contract or commercial agreement that I have not entered into knowingly, voluntarily, and intentionally;

(3). that My explicit reservation of Rights has served notice upon ALL agencies of government that they are ALL limited to proceedings against Me only in harmony with the Common Law and that I do not, and will not accept the liability associated with the "compelled" benefit of any unrevealed commercial agreements; and

(4). that My valid reservation of Rights has preserved all My Rights and prevented the loss of any such Rights by application of the concepts of waiver or estoppel.

RELIEF

WHEREFORE, it is demanded/desired that the ORDER, dated July 8, 2022, be **reconsidered** AND THAT ON THE BASIS OF THE FOREGOING, cause be **DIMSISSSED** outright with prejudice.

Certificate of service

This is to certify that a true and correct copy of the foregoing has been delivered this 4 day of August 2022, to the court not of record at the following address:

Davis County Justice Court
Judge John Carl Ynchausti
800 W State St.
Farmington, UT 84025

By Diane Kellian-Allen
Signature / Seal

Received By Maddie Edwards
8:48 pm

Formal Challenge to the Twelve Presumptions of Law

Definition of presumption:

<http://www.oxforddictionaries.com/definition/english/presumption>

1. An idea that is taken to be true on the basis of probability:

As a presumption, is a presumption on which must be agreed by the parties, to be true. THEN and EQUALY

If one party challenges the presumption to be true on the basis of probability, then all that is required to remove the presumption is a formal challenge to that presumption. The presumption then, has no standing or merit in FACT.

A probability:

http://www.oxforddictionaries.com/definition/american_english/probability

1. The extent to which something is probable; the likelihood of something happening or being the case.

By definition then, this is not substantive as it is only a probability of what may be and therefore has NO substance, in material FACT.

A **State Court** does not operate according to any true rule of law, but by presumptions (colour) of the law. Therefore, if presumptions presented by the private Bar Guild are not rebutted, they become fact and are therefore said to stand true. There are twelve (12) key presumptions asserted by the private Bar Guilds which if unchallenged stand true, being *Public Record, Public Service, Public Oath, Immunity, Summons, Custody, Court of Guardians, Court of Trustees, Government as Executor/Beneficiary, Agent and Agency, Incompetence, and Guilt*:

(i) ***The Presumption of Public Record*** is that any matter brought before a state Court is a matter for the public record when in fact it is presumed by the members of the private Bar Guild that the matter is a private Bar Guild business matter. Unless openly rebuked and rejected by stating clearly the matter is to be on the Public Record, the matter remains a private Bar Guild matter, completely under private Bar Guild rules;

I, Diane Killian Allan, the undersigned formally challenge the *Presumption of Public Record* as it is by definition a presumption and has no standing or merit in presentable or material fact.

(ii) ***The Presumption of Public Service*** is that all the members of the Private Bar Guild who have all sworn a solemn secret absolute oath to their Guild then act as public agents of the Government, or “public officials” by making **additional** oaths of public office that openly and

challenged by rejection of summons and/or at court, the presumption stands you are a thing and property and therefore lawfully able to be kept in custody by custodians;

I, Diane Killian Allan, the undersigned formally challenge the *Presumption of Custody* as it is by definition a presumption, by definition and has no standing or merit in presentable or material fact.

(vii) *The Presumption of Court of Guardians* is the presumption that as you may be listed as a "resident" of a ward of a local government area and have listed on your "passport" the letter P, you are a pauper and therefore under the "Guardian" powers of the government and its agents as a "Court of Guardians". Unless this presumption is openly challenged to demonstrate you are both a general guardian and general executor of the matter (trust) before the court, the presumption stands and you are by default a pauper, and lunatic and therefore must obey the rules of the clerk of guardians (clerk of magistrates court);

I, Diane Killian Allan, the undersigned formally challenge the *Presumption of Guardians* as it is by definition a presumption, by definition and has no standing or merit in presentable or material fact.

(viii) *The Presumption of Court of Trustees* is that members of the Private Bar Guild presume you accept the office of trustee as a "public servant" and "government employee" just by attending a Roman Court, as such Courts are always for public trustees by the rules of the Guild and the Roman System. Unless this presumption is openly challenged to state you are merely visiting by "**invitation**" to clear up the matter and you are not a government employee or public trustee in this instance, the presumption stands and is assumed as one of the most significant reasons to claim jurisdiction - simply because you "appeared";

I, Diane Killian Allan, the undersigned formally challenge the *Presumption of Trustees* as it is by definition a presumption, by definition and has no standing or merit in presentable or material fact.

(ix) *The Presumption of Government acting in two roles as Executor and Beneficiary* is that for the matter at hand, the Private Bar Guild appoints the judge/magistrate in the capacity of Executor while the Prosecutor acts in the capacity of Beneficiary of the trust for the current matter. If the accused does seek to assert their right as Executor and Beneficiary over their body, mind and soul they are acting as an Executor De Son Tort or a "false executor" challenging the "rightful" judge as Executor.

Therefore, the judge/magistrate assumes the role of "true" executor and has the right to have you arrested, detained, fined or forced into a psychiatric evaluation. Unless this presumption is openly challenged to demonstrate you are both the true general guardian and general executor of the matter (trust) before the court, questioning and challenging whether the judge or magistrate is seeking to act as Executor De Son Tort, the presumption stands and you are by default the trustee, therefore must obey the rules of the executor (judge/magistrate) or you are an Executor

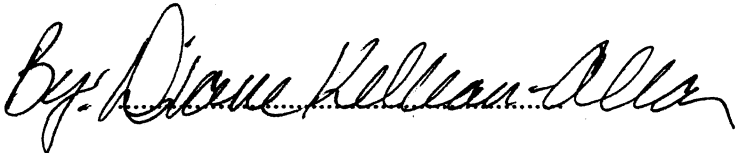
I formally challenge all presumptions of law and as I have formally challenged all the twelve presumptions of law then the presumption of law formally has no substance in material FACT.

I will recognise the rule of law, when and only when there is the material evidence of, that assumed rule of law has some material evidence of substance in presentable material fact.

Until then, the search for the rule of law, that has some credibility in material fact: continues.

It is done.

Without ill will or vexation

A handwritten signature in black ink, appearing to read "By Diane Killian Allan". The signature is written in a cursive, flowing style.

Diane Killian Allan

For and on behalf of the Legal Entity Diane Killian Allan and the living woman, Diane; .Killian-Allan: